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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,641	08/26/2003	Nikki Casstevens	PGI6044P0991US	3897

32116 7590 09/11/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 W. MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661

EXAMINER
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MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/648,641

Applicant(s)

CASSTEVENS ET AL.

Examiner

Matthew D. Matzek

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/25/2006 has been entered.

***Terminal Disclaimer***

2. The terminal disclaimer filed on 7/25/2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of Application No. 10/206,271 has been reviewed and is accepted. The terminal disclaimer has been recorded. Therefore, the previously applied provisional obvious double patenting rejection has been withdrawn.

***Response to Amendment***

3. The amendment dated 7/25/2006 has been fully considered and entered into the Record. Claims 16 and 17 have been canceled and new claim 22 has been entered. The rejection claims 1-21 under 35 U.S.C. 103(a) as unpatentable over Gilmore et al. (US 5,369,858) in view of Fereshtekhou et al. (PG Pub 2001/0055926) has been withdrawn as Gilmore et al. is directed to a nonwoven fabric without fibrous projections.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1771

4. Claim 15 recites the limitation "said image transfer device". Claim 1 has been amended to remove the image transfer device. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 is dependent upon itself. For examination purposes claim 19 has been interpreted to be dependent upon claim 1.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-15 and 18-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Carter et al. (US 6,675,429).

a. Carter et al. disclose a hydroentangled, nonwoven article that has been imparted with a three-dimensional image for use in cleaning applications (Abstract). Figures 2-7 and 9-12 illustrate nonwoven articles of the invention that possess fibrous surface projections extending from a fibrous support plane and comprising at least 25% of the thickness of the overall support plane. Figure 8 illustrates an image transfer device used to impart a "wave" structure to the applied invention. The Examiner takes the position that all of the illustrated nonwoven articles of this applied invention provide the "wave-like" surface projections claimed herein, and form air passageways parallel to the fibrous support plane. This position is supported by the fact that topography of the illustrated

Art Unit: 1771

articles necessarily forms "waves" as the protrusions form crests in the sheets and the apertures and unelevated plane form valleys.

b. The imaged nonwoven web may be made of staple fibers of lengths of 1 to 2 inches, denier within a range of 1 to 6 denier and hydrophobic or hydrophilic surface modifiers (claims 2-4, 6, 11 and 14). The nonwoven web may further comprise melt additives, the instantly claimed types of staple fibers and possesses the instantly claimed basis weights (claims 5, 7-10 and 19-20). In the preferred form, the precursor web is hydroentangled on a foraminous surface prior to hydroentangling on the image transfer device (col. 3, lines 31-37). Claims 16 and 17 of the applied patent teach the use of instantly claimed image transfer devices.

c. Claims 20 and 21 are rejected as the article of the prior art meet the structural and compositional limitations set forth in independent claim 1. As such said article is capable of forming a lather and serve as a facial cleaning product.

7. Claims 1-12, 15 and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Fereshtekhou et al. (US PG Pub 2001/0055926) published on 12/27/2001 and on file as of 4/12/2001.

a. Fereshtekhou et al. disclose hydroentangled, macroscopically three-dimensional cleaning sheets (Abstract and [0065]). A preferred cleaning sheet comprises an essentially continuous region of higher basis weight and a plurality of discontinuous regions circumscribed by the high basis weight region [0008]. With regards to caliper differences it is preferred that the caliper difference between the discontinuous regions and the continuous region is at least 25% [0060]. Figure 4 illustrates the wave-like form

of the sheet allowing air passageways parallel to the fibrous support plane. The use of staple fibers for reinforcement means of a cleaning sheet is taught [0003]. Hydrophobic surfactants such as paraffin are available for the surface modification of the cleaning sheet [0109]. Claims 5 and 6 are rejected as the nonwoven fabric of the applied invention may comprise either hydrophobic or hydrophilic meltblown fibers [0064]. With regards to claim 4 it is noted that the Fereshtekhou et al. reference further teaches the use of additives in the fibers that read on the presently claimed additives [0109]. The fibers of the cleaning sheet may be made of natural cellulose, polyolefins, polyesters, and polyamides [0064].

b. The fibers of the hydroentangled web comprise fibers of less than 4.0 denier [0074]. Claims 15-17 are rejected as the presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. The instantly claimed article and that of prior art are hydroentangled webs comprising common staple fibers, denier, additives and are imparted with three-dimensionality, therefore both articles are the same or similar.

c. Claims 18 and 19 are rejected as the basis weight of the nonwoven fabrics of Table 1 range from 1.85-4.80 ounces per square yard (calculation done by Examiner).

d. Claims 20 and 21 are rejected as the article of the prior art meet the structural and compositional limitations set forth in independent claim 1. As such said article is capable of forming a lather and serve as a facial cleaning product.

***Response to Arguments***

Art Unit: 1771

8. Applicant's arguments filed 7/25/2006 have been fully considered but they are not persuasive.

9. Applicant argues that the Carter et al. reference makes no mention of surface projections that are wave-like in form. Figure 8 illustrates an image transfer device used to impart a "wave" structure to the applied invention. The Examiner takes the position that all of the illustrated nonwoven articles of this applied invention provide the "wave-like" surface projections claimed herein, and form air passageways parallel to the fibrous support plane. The term "wave" is used by patentee to describe the surface topography that is to be transferred to invention (col. 4, lines 10-13).

10. Applicant argues that Carter et al. fail to teach the improved performance associated with surface projections that are wave-like in form. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., improved performance) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

11. In response to applicant's argument that the Carter et al. reference appears to be unrelated to the current invention and makes no mention of using the fabric for cleaning applications, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Art Unit: 1771

12. Applicant argues that Fereshtekhou et al. is not made in a manner that would result in surface projections that extend from the fibrous plane. Rather that the applied invention is gathered to create a macroscopically three-dimensional outward surface of the third layer. Examiner agrees that a different method was used to create the Fereshtekhou et al. invention than that being instantly claimed, but the instantly claimed article only requires surface projections extending from a fibrous support plane and said surface projections are wave-like in form. This limitation is met by the applied reference as it provides a wave-like form as illustrated by Figure 4. The structure of the sheet allows air passageways parallel to the fibrous support plane.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

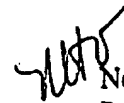


Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mdm

*MDM*



Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

September 5, 2006